IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1645 OF 2005
IN
SECOND APPEAL ST.NO.3475 OF 2005

1.Mr.Anandrao Narsinha Patil and ors...Applicants
Versus
Mr.Pandharinath Vasudeo Champenerkar...Respondent

Mr.G.S.Godbole for applicants
Mr.R.P.Joshi for respondent

WITH

CIVIL APPLICATION NO.1646 OF 2005
IN
SECOND APPEAL ST.NO.3434 OF 2005

1.Mr.Anandrao Narsinha Patil and ors...Applicants
Versus
Mr.Vinayak Shankar Prabhudesai ...Respondent

Mr.G.S.Godbole for applicants
Mr.R.P.Joshi for respondent

WITH

CIVIL APPLICATION NO.1650 OF 2005
IN
SECOND APPEAL ST.NO.3480 OF 2005

1.Mr.Anandrao Narsinha Patil and ors...Applicants
Versus
Mr.Prashant Ramakrishna Patkar ..Respondent

Mr.G.S.Godbole for applicants
Mr.R.P.Joshi for respondent

WITH

CIVIL APPLICATION NO.1651 OF 2005
IN
SECOND APPEAL ST.NO.3477 OF 2005

1.Mr.Anandrao Narsinha Patil and ors...Applicants

Versus
Smt.Jyoti Subhash Desai ..Respondent

Mr.G.S.Godbole for applicants
Mr.R.P.Joshi for respondent

WITH

CIVIL APPLICATION NO.1681 OF 2005
IN
SECOND APPEAL ST.NO.3489 OF 2005

1.Mr.Anandrao Narsinha Patil and ors...Applicants
Versus
Mr. Vishnu Krishna Sawant ..Respondent

Mr.G.S.Godbole for applicants
Mr.R.P.Joshi for respondent

CORAM : P.V.KAKADE, J.

DATE : 30TH SEPTEMBER, 2005.

P.C.:

1. All these applications are being heard and disposed of by this common order,as the parties and issues involved are the same, as they are applications for condonation of delay in filing the second appeal filed by the applicants-landlord against the respondent-tenant.

2. The delay in question in all the matters is of 349 days in preferring the second appeal.

3. I have heard learned counsel for both the parties. Perused the record.

4. The Applicants stated that the deceased plaintiff had filed Civil Suit in the Court of C.J.J.D. Vasai for possession of the suit premises against the respondent-tenant and by judgment and order dated 18.6.1998 the suit was partly decreed. The appeal was carried to the District Court wherein the appeal came to be dismissed by A.D.J. Palghar. On account of the observations made in the said judgment and the original plaintiff were under an incorrect impression that the suit premises are governed by the provisions of the Bombay Rent Act and in view of this aspect the original plaintiff had filed Writ Petitions in this Court. However, thereafter it was realised that the Writ Petition could not be maintainable and those were withdrawn, which can be seen from the order dated 28.9.2004 passed by this Court in those Writ Petitions. It is a case of the applicants that the original plaintiff and the advocate were under wrong impression from the observations of the learned A.D.J. in the improved order that the suit premises are governed by

the provisions of the Rent Act and therefore, Writ Petitions came to be filed. In other words, the case is sought to be made that it was a bona fide mistake on the part of the concerned advocate, and therefore, writ petitions came to be filed wrongly instead of second appeal, hence the delay was caused.

5. The learned counsel for the respondent vehemently opposed the applications on various grounds, inter alia, submitting that the applications are mala fide and in fact the applicants already had knowledge that the Bombay Rent Act was not applicable to the present case, and therefore, the ground sought to be argued that it was a bonafide mistake on behalf of the advocate should not be accepted in law.

. The learned counsel for the respondent for that purpose sought to put reliance on the ruling of the Apex Court in the case of State of West Bengal vs. The Administrator, Howrah Municipality and Ors. reported in AIR 1972 SC 749 where under the Apex Court had occasion to define the scope of the term "Sufficient cause" contemplated under Section 5 of the Limitation Act. Perusal of the judgment of the Apex Court shows that the

apex Court was of the view that the plea of such nature should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. On this basis it was urged on behalf of the respondent that the ground mentioned in the application cannot be sufficient cause, as it is a smacks of mala fides. However, the learned counsel for the applicants also put reliance on the ruling of the Apex Court in the case of Mata Din vs. Narayanan reported in AIR 1970 SC 1953 wherein it was observed that the mistake of Counsel will not in every case by itself be sufficient ground to condone delay, however, delay in filing appeal due to earlier filing of appeal in wrong forum on mistaken advice of counsel should be considered as sufficient ground, if there is no reason to show that the error of counsel was tainted by any mala fide motive. Therefore, if we peruse the facts involved in this case, it is apparent that it cannot be said that the wrong impression, candidly admitted by the learned counsel for the applicants, cannot be held to be tainted by mala fide and therefore, I am inclined to hold that the applications were to be allowed. Hence, the applications are made absolute in terms of prayer clause (a) on condition that in each

application the Applicants shall pay cost of Rs.2000/= each out of which Rs.1000/= each shall be donoted to the State Legal Authority and remaining Rs.1000/= each shall be paid to the Respondent within two weeks from the date of this Order. With this direction all the Five Applications are disposed of with no order as to costs. Liberty to pay cost to the Advocate for the Respondent.